80-1070

Supreme Court, U. S.
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No. _____

SUPREME COURT OF THE UNITED STATES

October Term, 1980

DONNA RIDGWAY and
THE PRUDENTIAL INSURANCE COMPANY
OF AMERICA
Petitioners

v.

HAYLEY D. RIDGWAY, LAURIE R. RIDGWAY,
AND BRADY L. RIDGWAY
BY THEIR MOTHER AND NEXT FRIEND,
APRIL D. RIDGWAY
Respondents

JOINT PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MAINE

JOINT PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Where a state court divorce decree requires a serviceman to designate his children beneficiaries of his Servicemen's Group Life Insurance policy, and he subsequently designates another, do the Supremacy Clause and the Servicemen's Group Life Insurance Act prohibit a state court from imposing a constructive trust on the SGLI proceeds to defeat the serviceman's designation?

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IN THE
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DONNA RIDGWAY AND
THE PRUDENTIAL INSURANCE COMPANY
OF AMERICA,
Petitioners

v.

HAYLEY D. RIDGWAY, LAURIE R. RIDGWAY,
AND BRADY L. RIDGWAY,
BY THEIR MOTHER AND NEXT FRIEND,
APRIL D. RIDGWAY,
Respondents.

JOINT PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME JUDICIAL COURT OF MAINE

The Petitioners, Donna Ridgway and The Prudential Insurance Company of America (Prudential), respectfully pray that a Writ of Certiorari issue to review the mandate of the Supreme Judicial Court of Maine entered in this proceeding on September 25, 1980, and the opinion of that Court entered September 26, 1980.

OPINION BELOW

The opinion of the Supreme Judicial Court of Maine appears at 419 A. 2d 1030. A copy of that opinion, and of the opinion of the Maine Superior Court Justice which it reversed, appear in the Appendix hereto.

JURISDICTION

The judgment of the Maine Supreme Judicial Court was entered on September 26, 1980, and this Petition for Certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. §1257(3).

QUESTION PRESENTED

Where a state court divorce decree requires a serviceman to designate his children beneficiaries of his Servicemen's Group Life Insurance policy, and he subsequently designates another, do the Supremacy Clause and the Servicemen's Group Life Insurance Act prohibit a state court from imposing a constructive trust on the SGLI proceeds to defeat the serviceman's designation?

CONSTITUTIONAL PROVISION INVOLVED

. . . .

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and all the Judges in every State

shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

....

U. S. CONST., Art. VI.

STATUTORY AND REGULATORY PROVISIONS INVOLVED

The provisions of 38 U.S.C. §§717(a), 770, and 3101(a), and 38 C.F.R. §9.16 are set forth in the Appendix hereto.

STATEMENT OF THE CASE

Richard Ridgway, a career Army Sergeant, was insured under a Serviceman's Group Life Insurance (SGLI) policy for $20,000.00. Prior to his December 7, 1977, divorce from his first wife, April Ridgway, Sergeant Ridgway had designated her as the beneficiary of that policy. The divorce decree provided:

> Defendant is ordered to keep in force the life insurance policies on his life now outstanding for the benefit of the parties' three children. If any of such insurance policies should subsequently be terminated for any reason, Defendant shall immediately replace it with other life insurance of equal amount for the benefit of the children.

On March 28, 1978, Richard married Donna Ridgway. On April 3, 1978, Richard changed the beneficiary designation on the SGLI policy to direct that the proceeds be paid as specified "by law" and therefore to his wife at the time of his death. *See* 38 U.S.C. §770(a); 38 C.F.R. §9.16. Following Sergeant Ridgway's death on January 5, 1979, both April Ridgway and Donna Ridgway filed claims under the policy.

Faced with the stated intention of the private insurance carrier to pay the policy proceeds to the second wife, Donna, April Ridgway then instituted an action on behalf of her three minor children against Prudential in the Superior Court of Maine for Androscoggin County. Donna Ridgway subsequently joined in the action voluntarily as a party Plaintiff. Following consolidation of a preliminary injunction hearing with a final hearing on the merits, the case was submitted to the trial court on stipulated

facts. The Supremacy Clause question presented here was specifically raised as an affirmative defense in the trial court by Answer of Petitioner Donna Ridgway, and fully briefed by all parties in the trial and appellate courts.

The Superior Court ruled that federal law gave the insured serviceman an absolute right to designate or change the beneficiary of his SGLI policy, and that the Supremacy Clause of the federal constitution accordingly required payment of the proceeds to Donna despite the contrary state court divorce decree requiring designation of the serviceman's minor children by his first marriage as the policy beneficiaries. The Superior Court specifically refused to consider imposition of a constructive trust on Donna, as sought by April Ridgway, holding that it was powerless to consider this remedy under the Supremacy Clause and the subject federal statute.

On appeal by April Ridgway on behalf of her children, the Maine Supreme Judicial Court reversed, holding that, by granting servicemen the absolute right to select their beneficiaries, 38 U.S.C. §770(a) did not embody a federal interest sufficient to constitute pre-emption; that the anti-attachment provision of 38 U.S.C. §770(g) did not apply to this case since the equitable interest claimed by Sergeant Ridgway's minor children did not amount to the claim of a "creditor;" and that the federal statute and regulations did not "prevent a state court from using its equitable power to reach the proceeds in the hands of the statutory beneficiary for the benefit of the serviceman's minor children." 419 A.2d at 1033. The Maine court declared:

> In the absence of an express congressional mandate or the decision of a court which we are bound to follow, we consider ourselves obligated to enforce the valid decrees of our state courts.

419 A.2d at 1035.

REASONS FOR GRANTING THE WRIT

I. THE MAINE SUPREME COURT HELD THAT THE SERVICEMEN'S GROUP LIFE INSURANCE ACT DOES NOT PREVENT IMPOSITION OF A CONSTRUCTIVE

TRUST TO ENFORCE A STATE COURT DIVORCE DECREE, A QUESTION WHICH HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT.

Where Congress makes federal insurance benefits available to individuals, to what extent can state law confer an interest in those benefits upon one other than their congressionally-intended recipient? The result under the Supremacy Clause depends on the nature of the federal interest involved together with evidence of congressional intent to pre-empt inconsistent state law, compared to the importance of the state interest asserted. The state-federal conflict becomes especially acute where, as in this case, the state interest involved is the financial support of its minor citizens following divorce, but the federal statute is enacted pursuant to congressional power over national defense and demonstrates an intent to pre-empt contrary state law. Although recent legislation and judicial decisions have narrowed the conflict between state court alimony and support decrees and federal benefit programs other than life insurance, the conflict between such decrees and the provisions of the Serviceman's Group Life Insurance Act and similar military insurance programs remains unresolved.

Since World War I, Congress has demonstrated a particular federal interest in granting those in the military service of the United States absolute control over proceeds of their servicemen's life insurance policies. Cases under each of the various acts establishing such coverage have ruled that no state law or order of any state court can restrict this absolute right. *E.g.*, *Wissner v. Wissner*, 338 U.S. 655 (1950) (National Service Life Insurance); *United States v. Williams*, 302 U.S. 46 (1937) (War Risk Insurance); *The Prudential Insurance Company of America v. King*, 453 F. 2d 925 (8th Cir. 1971) (Servicemen's Group Life Insurance). One question affecting the absolute nature of the serviceman's right to control disposition of his life insurance proceeds which has not yet been settled by this Court, however, is whether the insured's obligation of support under a divorce decree may override the apparent intent of Congress.

This Court's decision in *Wissner v. Wissner*, 338 U.S. 655 (1950), held that state community property law impermissibly conflicted with the National Service Life Insurance Act, the World War II era predecessor of the Servicemen's Group Life Insurance Act. The Court ruled that portions of the controlling statute giving servicemen the absolute right to designate their beneficiaries were a valid exercise

of the federal congressional power over national defense and displaced contrary state property law, and further held that the anti-attachment provisions of the Act preclude state courts from ordering a serviceman's designated beneficiary to pay over proceeds to the widow. In holding the asserted community property rights to be an insufficient basis for overruling the federal statutory provisions, the Court examined various state court decisions holding that provisions for exemption from attachment of the National Service Life Insurance Act and similar pensions and veterans' relief programs do not apply when alimony or support is in issue. However, the Court found those cases "irrelevant" to the particular issues before it and restricted its holding to pre-empt community property claims only. 338 U.S. at 660.

Some adjustment of the competing interests of recipients of other forms of federal benefits and their dependents following divorce was made in 1977, when Congress enacted new §459 of the Social Security Act, 42 U.S.C. §659, permitting attachment of certain benefits due from the United States or federal agencies to enforce alimony and child support obligations. The 1977 amendment was held in *Hisquierdo v. Hisquierdo*, 439 U.S. 572 (1979), not to override the anti-attachment provisions of the Railroad Retirement Act[1] since the amendment defined alimony to exclude divisions of property between spouses. The provisions of the Railroad Retirement Act therefore pre-empted state community property law. The 1977 amendment was limited to moneys "the entitlement to which is based on remuneration for employment" and to funds "due from or payable by, the United States or the District of Columbia," and so has no effect on SGLI benefits, which are neither based on remuneration nor paid by the government.[2] As distinguished from the instant case, *Hisquierdo* is, like *Wissner*, a community property case, and has left unanswered the resolution of competing federal and state priorities where the state court order is premised on considerations of child support.

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[1]45 U.S.C. §231m.

[2]Although, unlike SGLI, NSLI benefits are paid by the government, presumably the 1977 amendment does not affect NSLI recipients since the proceeds are not based on remuneration. *See generally* Annot., 44 A.L.R. Fed. 494 (1979); Annot., 93 A.L.R. 3d 711 (1979).

The Servicemen's Group Life Insurance Act, enacted in 1965, differs from the predecessor National Life Service Insurance Act in that the federal government is not the insurer. Instead, the Veterans Administration is authorized to procure a group life insurance policy with a qualified primary commercial insurer authorized to do business in all 50 states. The commercial insurer administers the program under the supervision of the Veterans Administration. Section 659 resolves the question of accessibility of federally-administered wages or retirement benefits to enforce alimony or support obligations, and the decision in *Hisquierdo* reaffirms the rule of pre-emption applicable to the conflict between federal benefit statutes and community property rights, notwithstanding enactment of §659. However, the conflict between state court divorce decrees directing alimony and support, and federal life insurance programs such as SGLI, remains unresolved.

This conflict affects an enormous number of outstanding policies, the servicemen and veterans who own them, and their families—not only the 3,100,000 individuals insured under SGLI, but an additional 850,000 veterans insured under Veterans Group Life Insurance policies (38 U.S.C. §777), over 3,000,000 World War II and Korean veterans still insured under NSLI policies, and approximately 100,000 insured under USGLI policies.[3] With the national divorce rate nearing 50%, the number of servicemen, veterans, and dependents likely to be affected by this state-federal conflict is well into the millions.

The unsettled nature of this pre-emption question particularly affects spouses contemplating separation agreements, and state courts called on to provide for alimony and support by decree. If the ruling below stands, confusion will be created regarding whether entitlement to SGLI benefits may be contractually negotiated or judicially decreed notwithstanding the obvious Congressional intent to pre-empt any interference with the serviceman's absolute right to change beneficiaries. If reversed, support arrangements or decrees can be fashioned without interference with that right. Without a definitive ruling, neither parties negotiating a divorce settlement nor courts ordering support can know

[3]Source for SGLI and VGLI figures: The Prudential Insurance Company of America, administrator. Source for USGLI and NSLI figures: Office of Administrator of Veterans' Affairs.

whether a serviceman's beneficiary designation right is absolute, or whether SGLI benefits can be redirected by a contrary divorce decree.

Certainly there are in existence other divorce decrees which, like Sergeant Ridgway's, purport to direct or limit the serviceman's right to change beneficiaries. Reliance on such ill-founded decrees is imprudent in light of the precedents discussed here. The decision below serves only to encourage further such imprudent reliance on the anticipation that a party will be entitled to SGLI proceeds, which may unexpectedly be paid to others. Such an unfortunate result can be avoided only if this court definitively states that such reliance is misplaced.

In addition, the unsettled question raised here increases the already substantial administrative burden of managing these federally-chartered benefit programs. Under prior programs, some extrinsic evidence of an insured's intent in designating a beneficiary was permitted in unusual cases. With the advent of SGLI, Congress determined that absolute compliance with procedural requirements for designation of beneficiaries was necessary. The courts have recognized that the Congressional intent behind this unyielding standard was "to avoid thrusting upon the private insurance carriers undue administrative burdens." *Stribling v. United States*, 419 F. 2d 1350 (8th Cir. 1969). The regulations promulgated under the SGLI program emphasize the absolute finality of a properly executed beneficiary designation. 38 C.F.R. §9.16 (a)-(f). "Congress has determined that such regulations were necessary to make the SGLI program administratively feasible, and the Court is not in a position to question that wisdom." *Stration v. Servicemans Group Life Insurance Company*, 422 F. Supp. 1119, 1122 (D. Iowa 1976). As this Court has observed, divorce is becoming more frequent.[4] Private insurance companies and government agencies which manage federal military life insurance programs require resolution of the conflicting demands of state court decrees and federal legislation regarding any of these millions of policies where the insured may be divorced. Otherwise, these unresolved conflicts will produce continuing uncertainty for the insurance administrators and lead to litigation whenever the wishes of the insured conflict with a state court decree.

[4] *Hisquierdo v. Hisquierdo*, 439 U.S. 572, 590 (1979).

Since its decision in *Wissner* 30 years ago, this Court has denied certiorari in four NSLI cases and one SGLI case. In none of these was the pre-emptive effect of either federal act permanently undermined. *Voelkel v. Tohulka*, 239 Ind. 588, 141 N.E.2d 344, *cert. den.* 355 U.S. 891 (1957), discussed later here, applied a constructive trust to effectuate the serviceman's intent, thus enhancing rather than restricting his rights under federal law. The Fifth Circuit in 1967 ruled that state law gave the guardian of an incompetent serviceman power to change his ward's beneficiary, turning to state law for a rule of decision where the federal act offered no guidance. *Roecker v. United States*, 379 F.2d 240 (5th Cir. 1967), *cert. den. sub nom. Tighe v. Roecker*, 389 U.S. 1005 (1967). In 1972, the Ninth Circuit held that the NSLI statute pre-empted a divorce decree purporting to divest the serviceman's ex-wife of any interest in his estate or any property owned by him. *Taylor v. United States*, 459 F.2d 1007 (9th Cir. 1972), *cert. den.* 409 U.S. 967 (1972). The California decision in *Milhan v. Milhan*, 13 Cal. App. 3d 129, 528 P.2d 1145 (1974), *cert. den.* 421 U.S. 976 (1975), threatened to undercut *Wissner* by giving a divorcing spouse an "offsetting" award of property to make up for the exclusion of service life insurance. That decision was disapproved by this Court last term in *Hisquierdo*, however. Another California case, this time under the SGLI statute, held that a divorcing serviceman did not demonstrate intent to change the beneficiary of his existing SGLI policy by naming his mother beneficiary on his application for conversion of the policy. *Hill v. Hill*, 23 Cal. App. 3d 760, 100 Cal.Rptr. 458 (1972), *cert. den.* 409 U.S. 1006 (1972).

Hill and *Voelkel* involved no real state-federal conflict. *Roecker* incorporated state guardianship law where federal law was silent. *Taylor* found the federal statute to pre-empt an inconsistent divorce decree, and the lower court's attempt in *Milhan* to circumvent pre-emption was curtailed by this Court in *Hisquierdo*. The Maine court's decision in this case is the first to hold squarely that federal law in this area does not pre-empt an inconsistent state decree, an error which Petitioners submit should be corrected by this Court.

At least two cases similar to this one are pending in lower courts at this writing. In *Nixon v. Prudential Insurance Co. of America*, (Circuit Court, 10th Judicial Circuit of Alabama, Docket No. CV-80-501-044), the court on October 2, 1980, entered an order

specifically staying further proceedings pending disposition of this petition. The Ninth Circuit also has pending an appeal from the District Court for the Northern District of California in *The Prudential Insurance Co. of America v. Johnson* (U.S. Dist. Ct., N.D. Cal., Docket No. C-79-2888). *Johnson*, unlike this case and *Nixon*, involves a claim to insurance proceeds based on community property law.

2. THE MAINE SUPREME COURT'S HOLDING THAT THE SERVICEMEN'S GROUP LIFE INSURANCE ACT DOES NOT PREVENT IMPOSITION OF A CONSTRUCTIVE TRUST CONFLICTS IN PRINCIPLE WITH DECISIONS OF OTHER STATE COURTS AND FEDERAL COURTS OF APPEALS.

Although the Servicemen's Group Life Insurance Act differs from the predecessor National Service Life Insurance Act in that the government is no longer the insurer, the provisions of each act conferring upon the serviceman an absolute right to designate and change beneficiaries are nearly identical. 38 U.S.C. §717(a) of NSLIA, like §770(a) of SGLIA, confers that right in express terms and provides for an order of preference of beneficiaries in the absence of an effective designation. The absolute nature of the serviceman's right to control the proceeds of his policy under each act is further guaranteed under anti-attachment provisions, 38 U.S.C. §3101(a) for NSLI, and §770(g) for SGLI.

Although no case from a state court of last resort or federal court of appeals has considered the impact of a state court divorce decree on the serviceman's rights under the newer SGLI form of policy,[5] cases decided under the nearly identical earlier statute clearly establish legislative intent to pre-empt any such interference. Cases decided to date under the new statute, while not reaching the divorce situation, have carried forward without exception the rule of pre-emption laid down in NSLI cases. The decision of the Maine Supreme Court in this case totally conflicts in principle with cases decided under the earlier statute (including

[5]In a district court case, *Weymann v. Wilson*, 320 F. Supp. 980 (M.D. Fla. 1970), imposition of a constructive trust on SGLI proceeds was sought, but was denied by the court without explanation.

those passing on enforceability of an inconsistent divorce decree), as well as those cases decided to date under SGLI. The decision below creates uncertainty by refusing to apply precedent established in NLSI cases to a familiar fact pattern when presented under the newer SGLI statute.

Relying on the right-to-designate provisions of 38 U.S.C. §717(a), the Ninth Circuit decided in *Hoffman v. United States*, 391 F.2d 195 (9th Cir. 1968), that a divorce decree requiring a husband to maintain his ex-wife as beneficiary under each of two NSLI policies impermissibly conflicted with the congressional intent to pre-empt such interference. The Court of Appeals for the District of Columbia concurred in *Suydam v. United States*, 404 F.2d 1329 (D. C. Cir. 1968), specifically rejecting a constructive trust theory like the one urged by Respondents here.

The Supreme Court of North Carolina reached a similar result even earlier in *Williams v. Williams*, 255 N.C. 315, 121 S.E. 2d 536 (1961), reasoning that a state court divorce decree preventing the insured from designating anyone other than his ex-wife amounted to a prohibited assignment under 38 U.S.C. §3101(a). In accord is *Fleming v. Smith*, 64 Wash. 2d 181, 390 P.2d 990, *aff'd* 69 Wash. 2d 277, 418 P.2d 147 (1966).

The rule of pre-emption sometimes works in favor of the former spouse. In *United States v. Donall*, 466 F.2d 1246 (6th Cir. 1972), although a Michigan statute and the serviceman's divorce decree both served to cut off his ex-wife's rights in any insurance policy, the Sixth Circuit ruled that the statutory beneficiary provisions of the NSLI policy pre-empted the inconsistent state law and decree, observing:

> It is well established that questions respecting the proper beneficiaries under NSLI policies are governed by federal law rather than state divorce law or state court divorce decrees.

466 F.2d at 1247. Accord: *Taylor v. United States*, 459 F.2d 1007 (9th Cir. 1972), *cert. den.* 409 U.S. 967 (1972). The Sixth Circuit had ruled previously in a case involving United States Government Life Insurance that an insured veteran retained the right to change beneficiaries following divorce, and that a contrary state court decree amounted to an assignment prohibited by 38 U.S.C. §3101(a). *Kimball v. United States*, 304 F.2d 864 (6th Cir. 1962).

The anti-assignment provisions of 38 U.S.C. §3101(a) have been extended to cases where an ex-spouse sues the insured's estate on a breach of contract theory, attempting to circumvent the many cases holding that an insured serviceman retains an absolute right to change beneficiaries. Texas and Idaho courts concur that a settlement agreement purporting to limit the insured's right to change beneficiaries following divorce is a prohibited assignment and so unenforceable even in an action for damages against the serviceman's estate. *McJunkin v. Estate of McJunkin*, 493 S.W. 2d 278, *error ref. n.r.e.* (Tex. Civ. App. 1973); *Harris v. Harris*, 487 P.2d 952 (Idaho 1971).

Although Respondents urged before the Maine Supreme Court various cases imposing constructive trusts on insurance benefits to effectuate a state court divorce decree, most of those cases involve merely private insurance policies or servicemen's policies converted to private policies, not within the constraint of 38 U.S.C. § 717(a), §770, or § 3101(a). Of the cases cited below, only *Voelkel v. Tohulka*, 239 Ind. 588, 141 N.E. 2d 344, *cert. den.* 355 U.S. 891 (1957), and *Burgess v. Murray*, 194 F.2d 131 (5th Cir. 1952), concerned NSLI policies. In each case a constructive trust was imposed, but only because it was necessary to implement, not defeat, the serviceman's freedom of choice regarding disposition of proceeds.

In *Voelkel*, the insured's sister refused to distribute policy proceeds among the decedent's siblings as she had agreed with him prior to his death. The Indiana court imposed a constructive trust, reasoning that nothing in the controlling statute "indicates that Congress desired to prevent the raising of a trust *where it is done to carry out the deceased soldier's intent.*" 141 N.E.2d 344, 346 (emphasis supplied). The Fifth Circuit ruled in *Burgess* that an insured serviceman's letter to his father requesting him to hold any proceeds for the benefit of the former's children was a manifestation of intent to change his beneficiary sufficient to control after death of the father. The court noted that "*the decree of the lower court was in accord with the desire of the insured.*" 194 F.2d 131, 132 (emphasis supplied).

Cases decided under SGLI have carried forward the rule of pre-emption. In one of the first cases decided under SGLI, a minor serviceman designated his fiancee beneficiary of his policy. The Supreme Court of Nebraska ruled that the federal statute preempted the serviceman's mother's claim, based on state law,

that her son's minority disabled him from making such a designation and that the policy proceeds should therefore pass to her as the beneficiary provided by statute in the absence of an effective designation.

> It is the contention of Plaintiff . . . that the state law governs while the Defendant contends that the decision rests solely on the federal acts of Congress . . . . We think that Serviceman's Group Life Insurance is a contract between the United States government and approved insurers for the benefit of the insureds, the same being those entering the military service of the United States. The designation of insurers by the federal government under regulations prescribed by the federal act amounts to a pre-emption of the field of servicemen's life insurance and it is therefore subject to the rules and regulations provided in the federal acts.

Johnson v. The Prudential Insurance Company of America, 182 Neb. 673, 156 N.W. 2d 812 (1968).

In *Stribling v. United States*, 419 F.2d 1350 (8th Cir. 1969), the Eighth Circuit ruled that a serviceman's effort to replace his wife with his mother as beneficiary by mailing a change of beneficiary form to his mother was ineffective since not received by the service involved, as required by 38 U.S.C. §770(a). This reasoning was applied to a divorce situation by a district court in *Weymann v. Wilson*, 320 F. Supp. 980 (M.D. Fla. 1970), since the divorce agreement requiring the insured serviceman to maintain his first wife as beneficiary was never submitted to the Air Force. A constructive trust theory was raised in an effort to circumvent the apparent requirements of §770(a), but denied.

In 1971, the Eighth Circuit adopted the Nebraska Supreme Court's reasoning in *Johnson*, supra, holding that an unmarried minor serviceman's mother had no claim under SGLI as the person to receive the proceeds in the absence of an effective designation of beneficiary, where her minor son had designated two friends. That court also ruled that the serviceman's use of a non-regulation form did not prevent his designation from being effective. *The Prudential Insurance Co. of America v. King*, 453 F.2d 925 (8th Cir. 1971).

In *Stratton v. Servicemen's Group Life Insurance Company*, 422 F. Supp. 1119 (D. Iowa 1976), the district court ruled on facts

almost identical to those in this case that the divorce decree could not divest the insured serviceman of his absolute right to change beneficiaries.

Against the clear background of these precedents, the opinion of the Maine Supreme Court below stands as an anomaly. It injects doubt into a substantively important area of law in which, until now, the result reached below would not reasonably have been predicted. The Maine court held that 38 U.S.C. §770(a) did not pre-empt inconsistent state court decrees, reading the legislative history of the Servicemen's Group Life Insurance Act to disclose only limited objectives—to make life insurance available to servicemen without war exclusion clauses, to make survivorship benefits available to parents of deceased servicemen without the necessity that the parents meet a "needs" test, and to permit servicemen to provide protection for other individuals without any showing of dependency. 419 A.2d at 1033. The Court failed to note, however, numerous indications in the legislative history that a primary purpose of the Act was to give the serviceman the right to select his beneficiary, and to change that beneficiary without consent of any prior beneficiary. 1965 U.S.Code Cong. & Ad. News 3232, 3236, 3240, 3241-42, 3243.

The Maine Supreme Court found the anti-attachment provisions of §770(g) inapplicable, holding that equitable claims of the minor children did not amount to a claim by "creditors," an exception never recognized in NSLI cases. A similar attempt by the ex-wife to distinguish herself from the class of creditors excluded by another federal anti-attachment provision was rejected by this Court in *Hisquierdo*. One critical difference between the anti-attachment statute involved in *Hisquierdo* and that here involved is that §231m of the Railroad Retirement Act at issue in *Hisquierdo* exempted federal pension benefits from "*legal* process," while 38 U.S.C. §770(g) extends to both legal and equitable claims. This distinction is important in light of this court's observation in *Hisquierdo* that judicial constructions permitting diversion of federal benefits for purposes of support were "a child of equity, not of law." The ruling by the Maine Supreme Court below that the federal statute and regulations "do not prevent a state court from using its equitable power to reach the proceeds in the hands of the statutory beneficiary for the benefit of the serviceman's minor children," 419 A.2d at 1033, circumvents federal law in a manner prohibited by *Wissner* and *His-*

quierdo, using the constructive trust approach to pay lip service only to the statutory command and diverting the policy proceeds from the designated beneficiary immediately upon receipt.

Considering NSLI and SGLI cases as a group, based on the nearly identical statutory provisions involved, the decision below stands opposed in principle to decisions by the Sixth, Eighth, Ninth and District of Columbia Circuit Courts of Appeal, and the state courts of North Carolina, Washington, Texas, Idaho, and Nebraska. Particularly because an approved insurer under SGLI must be eligible to do business in all 50 states, 1965 U.S.Code Cong. & Ad. News 3232, 3234, the anomalous decision of the Maine Supreme Court in this case will create an extraordinary opportunity for forum shopping, allowing the ex-spouse to avoid the effect of all contrary precedents by filing suit in Maine.[6]

CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the judgment and opinion of the Maine Supreme Judicial Court.

Respectfully submitted,

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[6]ME. REV. STAT. Ann. tit. 24-A, §421 requires an insurer qualified to do business in Maine to appoint the Maine Superintendent of Insurance its agent for service of process, thereby subjecting it to suit in Maine.

APPENDIX

A. DECISION OF MAINE SUPREME JUDICIAL COURT

MAINE SUPREME JUDICIAL COURT
Reporter of Decisions
Decision No. 2416
Law Docket No. And-79-30

HAYLEY D. RIDGWAY, ET AL.
V.
PRUDENTIAL INSURANCE COMPANY OF AMERICA

Argued: March 17, 1980
Decided: September 26, 1980

Before McKUSICK, C.J., and GODFREY, NICHOLS, GLASSMAN, and ROBERTS, JJ.

GLASSMAN, J.

In this case, we are called upon to decide a very narrow but important issue: whether federal law prohibits a state court from imposing a constructive trust on the proceeds of a Servicemen's Group Life Insurance policy in favor of a deceased serviceman's minor children when, contrary to a property settlement agreement and an express judicial decree, the serviceman failed to name the minor children as beneficiaries of that insurance.

Richard Ridgway, a career Army sergeant, was insured under a Servicemen's Group Life Insurance (SGLI) policy in the amount of $20,000. As of 1975, the designated beneficiary of this policy was the insured's wife, April Ridgway. On December 7, 1977, April was granted a divorce from Richard in the Superior Court, Androscoggin County. The divorce decree incorporated a property settlement agreement whereby Richard agreed to maintain for the benefit of his minor children the insurance policies on his life which he then owned. The divorce decree expressly commanded that he

> keep in force the life insurance policies on his life now outstanding for the benefit of the parties' three children. If

any of such insurance policies should subsequently be terminated for any reason, defendant shall immediately replace it with other life insurance of equal amount for the benefit of the children.

On March 28, 1978, Richard married Donna Ridgway. Six days later, he changed the beneficiary designation on the SGLI policy, directing that the proceeds of the policy be paid as specified "by law." Under federal law, this designation was effective upon Richard's death to direct payment of the proceeds to his widow, Donna. *See* 38 U.S.C. § 770(a) (1976); 38 C.F.R. § 9.16 (1979). Richard died on January 5, 1979; both Donna, as the decedent's widow, and April, on behalf of her minor chidren, filed claims for the proceeds of the policy.

On April 13, 1979, April filed a complaint in the Superior Court, Androscoggin County, against The Prudential Insurance Company of America after the insurer had indicated that it intended to pay the proceeds of the SGLI policy to Donna. The complaint sought a declaration that pursuant to the divorce decree the minor children were entitled to the policy proceeds as well as both permanent and temporary injunctive relief to prevent Prudential from paying the proceeds to Donna. By stipulation, Donna subsequently joined the action as a party plaintiff, requesting that the insurance proceeds be paid to her. *See* M.R.Civ.P. 19(a). By leave of court, April then amended the complaint to designate the three children as parties plaintiff and herself as next friend. *See* M.R.Civ.P. 17(b). By further amendment and the filing of a cross-claim against Donna, April sought the imposition of a constructive trust for the benefit of her children on any proceeds of the policy paid to Donna and an order that in the event Donna was declared a constructive trustee Prudential pay the proceeds directly to the minor children. Following consolidation of the preliminary injunction hearing with a hearing on the merits, *see* M.R.Civ.P. 65(b) (2), the case was submitted on the basis of the stipulated facts.

The Superior Court ruled that federal law gave an insured serviceman an absolute right by statutorily prescribed means to designate or to change the beneficiary of an SGLI policy, and, therefore, under the supremacy clause of the federal constitution, U.S. Const. art. VI, cl. 2, the insurance proceeds must be paid to Donna despite the inconsistent decree ordering the insured to

designate the minor chidren as beneficiaries of the policy. On this ground, the Superior Court denied April's request for declaratory and injunctive relief in favor of the children based on rights granted in the divorce decree. The court also denied April's request for imposition of a constructive trust on the insurance proceeds and dismissed the cross-claim against Donna, reasoning that federal law would also prohibit equitable interference with Donna's right to the proceeds of the policy. Accordingly, the Superior Court ordered Prudential to pay the proceeds of the policy to Donna.

April has appealed on behalf of her minor children. By agreement of the parties, the insurance proceeds have been deposited with the Clerk of the Superior Court awaiting decision by this Court. Because of this agreement, any question as to the propriety of the Superior Court's denial of injunctive relief is moot. The only issue presented to us is whether the Superior Court was in error in declining to impose a constructive trust on the insurance proceeds for the benefit of the minor children. This issue is joined in April's cross-claim against Donna. We vacate the dismissal of the cross-claim.

Courts have commonly imposed a constructive trust on the proceeds of life insurance policies in the hands of a named beneficiary when the deceased has failed, contrary to the provisions of a property settlement agreement or a divorce decree, to name his divorced wife or his children by his divorced wife as the beneficiaries of the life insurance policies. *See, e.g., McKissick v. McKissick*, 93 Nev. 139, ____, 560 P.2d 1366, 1369 (1977); *Simonds v. Simonds*, 45 N.Y.2d 233, ____, 380 N.E.2d 189, 191, 408 N.Y.S.2d 359, ____ (1978); *Richards v. Richards*, 58 Wis.2d 290, ____, 206 N.W.2d 134, 138 (1973). Donna and Prudential contend that these cases have no application to Servicemen's Group Life Insurance because Congress has preempted the field and legislated as to how the proceeds of such policies are to be distributed. It is their contention that the supremacy clause of the federal constitution prohibits a state court from imposing a constructive trust on the proceeds of an SGLI policy.

Pursuant to its power over national defense, Congress has adopted legislation establishing the SGLI program. *Cf. Wissner v. Wissner*, 338 U.S. 655, 660-61 (1950). There can be no question that Congress has the power fully to preempt the field when legislating pursuant to one of the express powers granted to it in

the Constitution. If it has done so, the supremacy clause prohibits state action inconsistent with the congressional design. In the absence of an express preemption, it has been noted by an authority on consitutional law:

> The question whether federal law "preempts" state action, largely one of statutory construction, cannot be reduced to general formulas. In evaluating patterns of statutory interaction, the Supreme Court has declared generally that whether challenged state action has been preempted turns on whether or not it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." L. Tribe, *American Constitutional Law* 377 (1978), *quoting Hines v. Davidowitz*, 312 U.S. 52, 67 (1941).

Thus, the issue in this case is whether the imposition of a constructive trust on the insurance proceeds in the hands of Donna for the benefit of Richard's minor children "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Id.*

The Servicemen's Group Life Insurance Act (SGLIA), 38 U.S.C. §§ 765-76 (1976), was enacted by Congress in 1965. The SGLIA authorized the Administrator of Veterans' Affairs to purchase from commercial insurers a group life insurance policy which provides qualified servicemen automatic coverage in a maximum amount of $20,000. 38 U.S.C. §§ 766(a), 767(a) (1976). A uniform premium is deducted from the servicemen's pay, but each insured can in writing opt out of the program or reduce the amount of coverage. *Id.*, §§ 767(a), 769(a). The Administrator of Veterans' Affairs has been granted broad rule-making authority in supervising this military insurance program. *Id.*, § 210(c) (1).

Section 770(a) of the SGLIA establishes a statutory order of beneficiary preference. In pertinent part, this section provides:

> Any amount of insurance under this subchapter in force on any member or former member on the date of his death shall be paid . . . in the following order of precedence.
>
> First, to the beneficiary or beneficiaries as the member or former member may have designated by a writing received prior to death (1) in the uniformed services if insured under Servicemen's Group Life Insurance . . . ;

> Second, *if there be no beneficiary, to the widow or widower of such member or former member*; (emphasis added)
>
> Third, if none of the above, to the child or children of such member or former member and descendants of deceased children by representation.... 38 U.S.C. § 770(a) (1976)

See also 38 C.F.R. § 9.16(i) (1979). Section 770(g) creates a statutory spendthrift provision:

> Payments of benefits due or to become due under Servicemen's Group Life Insurance... made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. 38 U.S.C. § 770(g) (1976).

Pursuant to his rule-making authority, the Administrator has promulgated several regulations concerning the designation and change of beneficiaries of SGLI policies. An insured "may designate any person, firm, corporation or legal entity" as beneficiary. 38 C.F.R. § 9.16(a) (1979). "Any designation or change of beneficiary... will take effect only if it is in writing, signed by the insured and received prior to the death of the insured by his or her uniformed service...." *Id.*, § 9.16(d). "A change of beneficiary may be made at any time and without the knowledge or consent of the previous beneficiary." *Id.*, § 9.16(e). "No change or cancellation of beneficiary... in a last will or testament, or in any other document shall have any force or effect unless such change is received by the appropriate office as provided in paragraph (d) of this section." *Id.*, § 9.16(f).

The objectives to be achieved by the enactment of the SGLIA were enumerated in a statement by W.J. Driver, Administrator of Veterans' Affairs, which is a part of the legislative history. *See* [1965] U.S. Code Cong. & Ad. News 3232, 3242-43. These objectives were: first, to make available to servicemen serving in a combat zone life insurance at standard rates and without war exclusion clauses; second, to make survivorship benefits available to non-dependent parents of deceased servicemen without the

necessity that the parents meet a "needs" test; and third, to permit servicemen to provide survivorship protection for individuals such as brothers and sisters without any showing of dependency. *Id.* In the limited circumstances which are here presented, the accomplishment of these objectives is neither obstructed nor interfered with by imposing a constructive trust on the insurance proceeds.

The statutory order of beneficiary preference established by Section 770(a) does not reflect any federal interest in permitting a serviceman to evade the responsibility to provide for his minor children imposed both by virtue of his voluntary agreement and by the express provision of a valid state court decree. Furthermore, the statutory spendthrift provision found in Section 770(g) has no application to the instant case since its purpose is to protect the proceeds of the insurance from the claims of creditors. We are concerned here not with the claim of a creditor but with the claims of minor children who assert an equitable interest in the proceeds arising from their deceased father's voluntary agreement and a valid judicial decree. Moreover, the promulgated regulations governing the designation and change of beneficiaries do not prevent a state court from using its equitable power to reach the proceeds in the hands of the statutory beneficiary for the benefit of the serviceman's minor children.

Prudential and Donna assert that the statutory provisions reflect an intention by the Congress to assure ease of administration by the private insurance carriers. Nothing either in the language or in the legislative history of the SGLIA indicates that Congress at any time was concerned with the administrative convenience of the private insurance carriers.

Prudential and Donna also cite several judicial decisions which, they contend, establish that federal preemption precludes the imposition of a constructive trust in this case. We have carefully examined all those authorities and conclude that they are either distinguishable, not controlling, or both.

For example, in the case of *Wissner v. Wissner*, *supra*, the deceased serviceman had been insured under a National Service Life Insurance policy and had paid the premiums from his pay, which under the law of his domicile, California, was community property. The insured had named his mother as principal beneficiary and his father as contingent beneficiary. The insured's widow brought suit in a California court claiming entitlement to

one-half the proceeds of the insurance policy under the state's community property law. Reversing a judgment in favor of the wife, the United States Supreme Court held that the general statutory community property law of the state of California could not override the general statutory provisions governing National Service Life Insurance which gave the insured the right to designate his beneficiary. 338 U.S. at 658-59. The Court specifically noted that a different result might obtain in cases involving alimony and/or support, stating:

> [We] must note that the community property principle rests upon something more than the moral obligation of supporting spouse and children: the business relationship of man and wife for their mutual monetary profit. Venerable and worthy as this community is, it is not, we think, as likely to justify an exception to the congressional language as specific judicial recognition of particular needs, in the alimony and support cases. *Id.* at 660 (citation omitted).

In *Johnson v. Prudential Insurance Company of America*, 182 Neb. 673, 156 N.W.2d 812 (1968), the mother of a deceased serviceman sought to recover the proceeds of an SGLI policy as against the designated beneficiary, the serviceman's fiancee, on the theory that under state law the serviceman invalidated his designation of beneficiary. The Nebraska court held that Congress, in authorizing a serviceman to designate the beneficiary of his SGLI policy, did not make any exception for minor servicemen and, therefore, the deceased's designation was controlling. *Id.* at ____, 156 N.W.2d at 814.

In *Hoffman v. United States*, 391 F.2d 195 (9th Cir. 1968), a divorce decree issued by a Washington court required a serviceman husband to designate, keep and maintain his wife as the sole beneficiary on his National Service Life Insurance policies. Contrary to this decree, the husband designated another beneficiary and upon his death his former wife sued the United States and the designated beneficiary to recover the proceeds of the insurance policies. The Ninth Circuit Court stated the issue before it as follows:

> Does a state court have the power to effectively require an *unwilling* veteran to maintain his former wife as beneficiary

on his National Service Life Insurance policies? *Id.* at 196 (emphasis added).

In reliance upon its interpretation of *Wissner v. Wissner*, *supra*, the court of appeals answered the question it had posed in the negative. It was able to characterize the serviceman in the *Hoffman* case as "unwilling" because he had not agreed to maintain his former wife as beneficiary. In the instant case, the serviceman had agreed with his former wife to keep his policies in force for the benefit of his children. Thus, the subsequently issued divorce decree did not require an "unwilling" serviceman to maintain his minor children as beneficiaries.

Other cases have involved merely the issue whether certain actions of the deceased serviceman were effective under the SGLIA to designate or change a beneficiary. In *Stribling v. United States*, 419 F.2d 1350 (8th Cir. 1969), the court construed the language of the SGLIA strictly, holding there had been no effective change of beneficiary since, as required by Section 770(a), the change of beneficiary form had not been received by the deceased's uniformed service prior to the serviceman's death. *Id.* at 1355. In *Prudential Insurance Company of America v. King*, 453 F.2d 925 (8th Cir. 1971), the same court construed the SGLIA more liberally, holding that the serviceman had effectively designated his beneficiary since he had satisfied the two elements required for designation: the intent to designate a particular person as beneficiary and an overt act to effectuate that intent. *Id.* at 931. The court further dealt with an issue similar to that decided in *Johnson v. Prudential Insurance Company of America*, *supra*, namely that the serviceman's mother was not entitled to the proceeds of his SGLI policy on the theory, advanced under state law, that because the serviceman was a minor she had the sole right to his custody, control and services. *Id.*[1] In *Coomer v. United States*, 471 F.2d 1 (5th Cir. 1973), the

1. Relying on *Stribling* and *King*, a federal district court has held that a state judicial decree could not alter a serviceman's federal right to designate his children as beneficiaries. *Stratton v. Servicemen's Group Life Ins. Co.*, 422 F.Supp. 1119, 1121-22 (S.D. Iowa 1976). Although we do not disagree with that conclusion, we are concerned here with the authority of a state court to enforce its own decrees by imposing a constructive trust on the insurance proceeds received by the designated beneficiary under a federal statutory scheme containing no express prohibition.

father of a deceased serviceman brought an action to recover the proceeds of an SGLI policy which had been received by the serviceman's widow. The court held that the serviceman had effectively changed his beneficiary since he had filled out a beneficiary designation form provided by the personnel man in charge of records designating his father as his primary beneficiary and the form had been taken into possession by Navy personnel even though it had not been placed in the serviceman's file at the time of his death. *Id.* at 6.

None of the foregoing authorities prohibit the imposition of a constructive trust in favor of the deceased serviceman's minor children in the circumstances of this case. We cannot see how imposing a constructive trust to enforce a valid judicial decree implementing the serviceman's voluntary agreement to name his minor children as the beneficiaries of his SGLI policy can in any way frustrate or impede the accomplishment of any legitimate federal objective. Nor do we find anything in the literal language of the statute or in its legislative history which would prohibit such action. In the absence of an express congressional mandate or the decision of a court which we are bound to follow, we consider ourselves obligated to enforce the valid decrees of our state courts. Our conclusion not only preserves the integrity of the state judicial process but also provides some assurance that these minor children will not become a public charge. We are not persuaded that Congress intended any different result.

We therefore vacate the judgment dismissing the cross-claim and remand the case to the Superior Court with directions to issue an order imposing a constructive trust on the proceeds of the SGLI policy insuring the life of Richard Ridgway and, since by stipulation the proceeds have been deposited with the Clerk of Courts to be distributed in accordance with the mandate of this Court, directing the Clerk of the Superior Court to pay the proceeds to April Ridgway for and on behalf of her three minor children.

The entry is:

Judgment of the Superior Court dismissing the cross-claim vacated.

Remanded to the Superior Court with directions to enter an order naming Donna Ridgway as constructive trustee of the

proceeds of the Servicemen's Group Life Insurance policy insuring the life of Richard Ridgway and directing the Clerk of the Superior Court to pay the insurance proceeds presently on deposit with said Clerk to April Ridgway for and on behalf of her minor children, Hayley Ridgway, Laurie Ridgway and Brady Ridgway.

In all other respects the judgment is affirmed.

Appellant awarded her costs.

B. MANDATE OF MAINE SUPREME JUDICIAL COURT

STATE OF MAINE

SUPREME JUDICIAL COURT
Sitting as the Law Court — LAW COURT DOCKET NO. AND-79-30

HAYLEY D. RIDGWAY, ET AL.
v.
PRUDENTIAL INSURANCE COMPANY OF AMERICA

MANDATE

The above-captioned cause having been brought before this Court, sitting as the Law Court, from the _____

Superior Court in the County of Androscoggin ; and it having been heard and maturely considered;

IT IS ORDERED that the Clerk of the Law Court enter upon the Law Court Docket and certify to the Clerk of the _____ Superior Court in the County of Androscoggin the following mandate therein: Judgment of the Superior Court dismissing the cross-claim vacated. Remanded to the Superior Court with directions to enter an order naming Donna Ridgway as constructive trustee of the proceeds of the Servicemen's Group Life Insurance policy insuring the life of Richard Ridgway and directing the Clerk of the Superior Court to pay the insurance proceeds presently on deposit with said Clerk to April Ridgway for and on behalf of her minor children, Hayley Ridgway, Laurie Ridgway and Brady Ridgway. In all other respects the judgment is affirmed. Appellant awarded her costs.

Dated: September 25, 1980

For the Court,

/s/ Harry P. Glassman

Justice

C. DECISION OF MAINE SUPERIOR COURT, ANDROSCOGGIN COUNTY

*(NOTE: The court several times in this decision and order refers incorrectly to Donna Ridgway as Donna Ridgway *Pinjani*. All references to the name Pinjani were deleted in a subsequent corrective order.)

STATE OF MAINE
ANDROSCOGGIN, SS

SUPERIOR COURT
CIVIL ACTION
DOCKET No. CV-79-209

HAYLEY D. RIDGWAY et als, by their mother and next friend, APRIL D. RIDGWAY

and

DONNA RIDGWAY

Plaintiffs

v.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA

Defendant

DECISION AND ORDER

This case is before the court on the complaint of April Ridgway, as mother and next friend of Hayley D., Laurie R. and Brady L. Ridgway, for a declaration of rights regarding the payment of the proceeds of a life insurance policy on the life of their father, Sergeant Richard Ridgway. The complaint includes an application for a preliminary injunction enjoining the payment of the proceeds to the Plaintiff, Donna Ridgway (now Pinjani), the widow, and second wife, of Sergeant Ridgway. There is also a cross-claim against Donna Ridgway in Count Two of the amended complaint which seeks to make her a trustee under a constructive trust for the benefit of the minor children of any proceeds of the policy which might be paid to her. A Temporary Restraining Order enjoining the insurance company from paying the proceeds of the policy to the widow is in force. By stipulation, trial on the merits of the complaint has been consolidated with hearing on the application for a preliminary injunction pursuant to Rule 65 (b) (2) M.R.Civ.P.

For the reasons given below, the application for preliminary

and permanent injunction, the request for declaratory judgment in favor of the minor children, and the request for imposition of a constructive trust are all denied. The Temporary Restraining Order, granted on April 13, 1979, is dissolved, and the Defendant insurance company is ordered to pay the proceeds of the life insurance policy on the life of Sergeant Richard Ridgway to his widow, Donna Ridgway Pinjani.

The essential facts of the case are not in dispute and have been stipulated. Sergeant Richard D. Ridgway was at one time married to April Ridgway. The couple had three children, who are now the actual plaintiffs in this case. At all relevant times, Richard Ridgway was a member of the armed forces. On December 7, 1977, Sergeant Ridgway and April Ridgway were divorced. It is stipulated (unless barred by the parol evidence rule) that prior to the divorce, extensive negotiations regarding a property settlement were carried on. Included in these negotiations was discussion of a Servicemen's Group Life Insurance Policy (SGLI) on the life of Sergeant Ridgway, in the amount of $20,000.00, and on December 8, 1975, Sergeant Ridgway told April Ridgway that she was the beneficiary. The result of the negotiations with regard to this life insurance policy was included in the divorce decree as follows:

> Defendant is ordered to keep in force the life insurance policies on his life now outstanding for the benefit of the parties' three children. If any of such insurance policies should subsequently be terminated for any reason, defendant shall immediately replace it with other life insurance of equal amount for the benefit of the children.

On March 28, 1978, Richard Ridgway married the Plaintiff, Donna Ridgway. On April 3, 1978, Sergeant Ridgway directed that the proceeds of his SGLI policy be paid as specified "by law" which the parties agree directs the proceeds to be paid to Richard's widow, and second wife, Donna.

Sergeant Ridgway died on January 5, 1979. April Ridgway filed a claim under the policy, based on the divorce decree, and Donna Ridgway filed a claim, as widow, based on the above cited statute and April 3, 1978 designation of beneficiary. Following the filing of these claims, April Ridgway, on behalf of her children, filed a complaint against Defendant Prudential Life Insu-

rance Company, seeking a declaratory judgment that pursuant to the divorce decree, the children were entitled to the proceeds of the policy. She included in the complaint an application for a preliminary injunction enjoining payment to Donna Ridgway. She also requested a Temporary Restraining Order enjoining payment of the proceeds to Donna Ridgway, which was granted, without notice, on April 13, 1979. On June 8, 1979, April Ridgway, Prudential Life Insurance Company and Donna Ridgway, all joined in a motion to include Donna Ridgway as a party plaintiff pursuant to Rule 19 M.R.Civ.P. This motion was granted on June 21, 1979. On the same day, April Ridgway, on behalf of her children, filed a cross-claim against Donna Ridgway. By this cross-claim, she seeks to have the proceeds of the policy in the hands of Donna Ridgway subjected to a constructive trust for the benefit of the plaintiff children. A second count was added to the original complaint by a motion granted on July 23, 1979, which likewise requests that the funds be held by Donna Ridgway as constructive trustee to be paid directly to April Ridgway as next friend and guardian of her children.

Although this action is in the nature of an interpleader, the real contest is obviously between the two Plaintiffs. Defendant admits that it will have to pay the proceeds of the policy to someone but seeks judicial guidance as to the appropriate recipient. Unlike an interpleader, however, the Defendant has taken the position that Donna Ridgway, the properly designated beneficiary of the contract by virtue of 38 U.S.C. §770(a), is the proper party to receive payment. The issue presented by the amended complaint is whether or not April Ridgway's request for declaratory relief, injunctive relief, and a constructive trust is barred by virtue of the Supremacy Clause of the United States Constitution.

Discussion of Law

Between 1956 and 1965, persons in the military service were not covered by any life insurance under federal legislation unless they had retained government life insurance issued before April 25, 1951. In 1965, owing to the intensification of the Vietnam War, Congress enacted the Servicemen's Group Life Insurance Act. Originally, the Act allowed coverage up to a maximum amount of $10,000.00. The maximum coverage was enlarged in 1970 (P.L.

91-291) and again in 1974 (P.L. 93-289). The present day maximum coverage is $20,000.00. It is automatic for all persons on active duty for more than 30 days. However, the insured is given the opportunity of reducing the coverage to $15,000.00, $10,000.00, $5,000.00 or to cease participation in the program entirely. 38 U.S.C. §767.

The SGLI program is different from past military life insurance programs in that the government is not the insurer. Under SGLI, the Veteran's Administration is authorized to take out a group life insurance policy with a qualified primary commercial insurer. The program is administered by the commercial insurer under the supervision of the Veterans' Administration. 2 U.S. Code Cong. and Admin. News, p. 3317 (1974).

The Administrator of Veterans' Affairs is given the authority to "make all rules and regulations which are necessary or appropriate to carry out the laws administered by the Veterans' Administration." 38 U.S.C. §210 (c) (1). Pursuant to this authority, the Administrator has promulgated several regulations regarding the designation of beneficiaries in an SGLI policy. The insured is allowed to designate "any person, firm, corporation or legal entity" as beneficiary. 38 C.F.R. §9.16 (a). Further, "A change of beneficiary may be made at any time and without the knowledge or consent of the previous beneficiary." 38 C.F.R.§9.16 (e).

It is clear that in passing the Servicemen's Group Life Insurance Act in 1965, Congress intended to pre-empt the field of military life insurance. *Prudential Insurance Company of America v. King*, 453 F.2d 925 (8th Cir. 1971). The regulations propounded by the Administrator of Veterans' Affairs under the authority of Congress are consistent with the intent of the Act. Compare 38 C.F.R.§9.16 (a-f) with 2 U.S. Code Cong. and Admin. News, p. 3232 (1965). Therefore, any state law inconsistent with the federal statute or regulations is displaced by federal law by virtue of the Supremacy Clause of the United States Constitution. *U.S. v. Shimer*, 367 U.S. 374, 6 L.Ed.2d 908, 81 S.Ct. 1554 (1960).

38 U.S.C. §770, and the regulations promulgated thereunder, does more than provide a procedure for the designation of a beneficiary. The serviceman is given the absolute right to designate any person or legal entity as beneficiary of his life insurance policy. *Johnson v. Prudential Insurance Company of America*, 182 Neb. 673, 156 N.W.2d 812 (Neb. 1968); *Stratton v. S.G.L.I.*,

422 F.Supp. 1119 (D.C. Iowa 1976). Since the divorce decree orders Sergeant Ridgway to designate a certain group of people as beneficiaries, the decree is inconsistent with the rights given him under federal law, and it must yield. Cf. *In re Marriage of Milhan*, 117 Cal. Rptr. 809, 528 P.2d 1145 (Cal. 1974), cert. denied, 421 U.S. 976. As a result, April Ridgway's request for a declaratory judgment in favor of the children, and her application for injunctive relief, based on the rights given in the divorce decree, must be denied.

The Plaintiff, April Ridgway, has also requested that a constructive trust be imposed on any proceeds of the policy paid to Donna Ridgway Pinjani. She argues that while the Defendant may have the absolute right to pay the proceeds to Donna Ridgway by virtue of federal law, federal law does not prevent the insured from making a binding contract for the disposition of the proceeds. She also contends that federal law in no way prevents the court from enforcing such an obligation with a constructive trust for the benefit of her children.

Many courts have held that when a party to a divorce agrees to designate the other party as beneficiary of any life insurance contracts, and such agreement becomes a part of the decree, the beneficiary of the agreement has an equitable right to those proceeds. If such an agreement is violated by the insured subsequently changing the beneficiary designation, a constructive trust is often the remedy granted by the court. *Simonds v. Simonds*, 45 N.Y.2d 233, 380 N.E.2d 189 (N.Y. 1978). However, the Simonds case, and all cases so holding, are distinguishable from this case in that they do not involve federal law.

April Ridgway's contention that federal law does not prevent a constructive trust in this situation is without merit. Federal regulations, in addition to giving the insured the right to designate anyone as a beneficiary at any time, also provide that any designation made will be effective only if it is in writing signed by the insured, and received by the uniform service involved before the death of the insured. 38 C.F.R. §9.16 (d) and (f). These regulations are to be strictly construed, *Stribling v. U.S.*, 419 F.2d 1350 (8th Cir. 1969). Here, it is undisputed that the divorce decree was never received by the proper office. Therefore, it has no effect on the designation of a beneficiary. Moreover, it is undisputed that, following his marriage to Donna Ridgway, the insured filed a

proper form in the proper office to change the beneficiary. Because of the absolute right given the insured to change the beneficiary of the policy at any time by proper filing, this filing, subsequent to the divorce decree, would have changed the beneficiary even if the decree had been properly filed. Therefore, it is clear that federal law gives Donna Ridgway a legal right to the proceeds of this insurance policy. The equitable power of the court cannot interfere with this positive federal law by imposing a constructive trust. See *Weymann v. Wilson*, 320 F.Supp. 980 (Fla. 1970).

April Ridgway is correct in saying federal law does not prevent the insured from making a binding agreement for disposition of the proceeds of an SGLI policy. The agreement embodied in the divorce decree is valid, and it would appear to give her a cause of action, on behalf of her children, against the estate of her former husband. *Stratton v. S.G.L.I., supra.* The Supremacy Clause requires that the federal statute override the court's equitable power to enforce such an agreement with a constructive trust. Accordingly, the entry must be:

> The Plaintiff, April Ridgway's, request on behalf of her minor children, for a declaratory judgment and for injunctive relief against the Defendant, Prudential Life Insurance Company, is *DENIED*. The Temporary Restraining Order issued on April 13, 1979, is *DISSOLVED*. The Plaintiff, April Ridgway's, request for imposition of a constructive trust is *DENIED*. The Defendant, Prudential Insurance Company, is *ORDERED* to pay the proceeds of the insurance policy on the life of the late Richard Ridgway to his widow, Donna Ridgway Pinjani.

Dated: September 14, 1979 /s/ Louis Scolnik

Louis Scolnik
Justice, Superior Court

D. STATUTES—38 U.S.C

38 U.S.C. §717(a): Insurance maturing on or after August 1, 1946.—The insured shall have the right to designate the beneficiary or beneficiaries of insurance maturing on or after August 1, 1946, and shall, subject to regulations, at all times have the right to change the beneficiary or beneficiaries of such insurance without the consent of such beneficiary or beneficiaries.

38 U.S.C. §770: Beneficiaries—Payment of insurance—(a) Any amount of insurance under this sub-chapter in force on any member or former member on the date of his death shall be paid, upon the establishment of a valid claim therefor, to the person or persons surviving at the date of his death, in the following order of precedence:

First, to the beneficiary or beneficiaries as the member or former member may have designated by a writing received prior to death (1) in the uniformed services if insured under Servicemen's Group Life Insurance, or (2) in the administrative office established under section 766(b) of this title if separated or released from service, or if assigned to the Retired Reserve, and insured under Servicemen's Group Life Insurance, or if insured under Veteran's Group Life Insurance;

Second, if there be no such beneficiary, to the widow or widower of such member or former member;

Third, if none of the above, to the child or children of such member or former member and descendants of deceased children by representation;

Fourth, if none of the above, to the parents of such member or former member or the survivor of them;

Fifth, if none of the above, to the duly appointed executor or administrator of the estate of such member or former member;

Sixth, if none of the above, to other next of kin of such member or former member entitled under the laws of domicile of such member or former member at the time of his death.

(b) If any person otherwise entitled to payment under this section does not make claim therefor within one year after the death of the member or former member, or if payment to such person within that period is prohibited by Federal statute or regulation, payment may be made in the order of precedence as if

such person had predecesed the member or former member, and any such payment shall be a bar to recovery by any other person.

(c) If, within two years after the death of the member or former member, no claim for payment has been filed by any person entitled under the order of precedence set forth in this section, and neither the Administrator nor the administrative office established by the insurance company or companies pursuant to section 766(b) of this title has received any notice that any such claim will be made, payment may be made to a claimant as may in the judgment of the Administrator be equitably entitled thereto, and such payment shall be a bar to recovery by any other person. If, within four years after the death of the member or former member, payment has not been made pursuant to this section and no claim for payment by any person entitled under this section is pending, the amount payable shall escheat to the credit of the revolving fund referred to in section 769(d).

(d) The member may elect settlement of insurance under this subchapter either in a lump sum or in thirty-six equal monthly installments. If no such election is made by the member the beneficiary or beneficiaries may elect settlement either in a lump sum or in thirty-six equal monthly installments. If the member has elected settlement in a lump sum, the beneficiary or beneficiaries may elect settlement in thirty-six equal monthly installments.

(e) Until and unless otherwise changed, a beneficiary designation and settlement option filed by a member with his uniformed service under prior provisions of law will be effective with respect to the increased insurance authorized under the Veterans' Insurance Act of 1974 and the insurance shall be settled in the same proportionate amount as the portion designated for such beneficiary or beneficiaries bore to the amount of insurance heretofore in effect.

(f) Notwithstanding the provisions of any other law, payment of matured Servicemen's Group Life Insurance or Veterans' Group Life Insurance benefits may be made directly to a minor widow or widower on his or her own behalf, and payment in such case shall be a complete acquittance to the insurer.

(g) Payments of benefits due or to become due under Servicemen's Group Life Insurance or Veterans' Group Life Insurance made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claims of creditors, and shall

not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. The preceding sentence shall not apply to (1) collection of amounts not deducted from the member's pay, or collected from him by the Secretary concerned under section 769(a) of this title, (2) levy under subchapter D of chapter 64 of the Internal Revenue Code of 1954 (relating to the seizure of property for collection of taxes), and (3) the taxation of any property purchased in part or wholly out of such payments.

38 U.S.C. §3101(a): Nonassignability and exempt status of benefits.—Payments of benefits due or to become due under any law administered by the Veterans' Administration shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. The preceding sentence shall not apply to claims of the United States arising under such laws nor shall the exemption therein contained as to taxation extend to any property purchased in part or wholly out of such payments. The provisions of this section shall not be construed to prohibit the assignment of insurance otherwise authorized under chapter 19 of this title, or of servicemen's indemnity.

§9.16 Beneficiaries and options.

(a) A member may designate any person, firm, corporation or legal entity (including the estate of the member), individually or as trustee, as beneficiary.

(b) Any designation of beneficiary or election of optional settlement made by any member insured under Servicemen's Group Life Insurance for full-time coverage or part-time coverage will remain in effect, until properly changed by the member or automatically canceled, under the following rules:

(1) If the insurance terminates following separation or release from all duty in a uniformed service.

(2) If the member enters on duty in another uniformed service.

(3) If the member reenters on duty in the same uniformed service more than 1 calendar day after separation or release from all duty in that uniformed service.

(c) If the member acquires Veterans' Group Life Insurance effective on the day following termination of his or her Servicemen's Group Life Insurance, any beneficiary designation in effect from the Servicemen's Group Life Insurance shall be considered a designation of beneficiary for Veterans' Group Life Insurance but not for more than 60 days after the effective date of the Veterans' Group Life Insurance, unless at the end of the 60-day period, the insured is incompetent in which event such designation may continue in force until the disability is removed but not for more than 5 years after the effective date of such insurance.

(d) Any designation or change of beneficiary or election of optional settlement will take effect only if it is in writing, signed by the insured and received prior to the death of the insured by his or her uniformed service or if executed during a period of coverage following separation or release from duty under § 9.5(a) or § 9.7 (a) or (b), or for coverage under § 9.1(a)(3) or made at any time and without the knowledge or consent of the previous beneficiary.

(f) No change or cancellation of beneficiary or election of optional settlement in a last will or testament, or in any other document shall have any force or effect unless such change is received by the appropriate office as provided in paragraph (d) of this section.

(g) Until and unless otherwise changed, a beneficiary designation and settlement option filed by a member with his or her uniformed service in effect on May 24, 1974, will be effective with respect to the increased amount of insurance authorized on May 24, 1974, by Pub. L. 93-289 (88 Sta. 165) and the insurance shall be settled in the same proportionate amount as the portion designated for such beneficiary or beneficiaries bore to the amount of insurance theretofore in effect.

(h) In any case in which a member separated or released from all obligation to perform duty in a uniformed service reenters on duty after a break in service while covered during the period of protection afforded under § 9.5(a) or § 9.7 (a) or (b) after termination of duty and waives coverage or elects coverage in the amount of $15,000, $10,000 or $5,000, an existing designation of beneficiary or election of optional settlement is not canceled with respect to any amount of insurance not replaced upon such reentry on duty.

(i) The insurance proceeds will be paid to the person or persons surviving the insured member in the following order of precedence:

(1) To the beneficiary or beneficiaries designated (see paragraph (d) of this section).

(2) If there be no such beneficiary, to the widow or widower. Notwithstanding the provisions of any other law, payment of matured Servicemen's Group Life Insurance or Veterans' Group Life Insurance benefits may be made directly to a minor widow or widower on his or her own behalf, and payment in such case shall be a complete acquittance to the insurer;

(3) If none of the above, to the child or children and descendants of deceased children by representation;

(4) If none of the above, to the parents or the survivor of them;

(5) If none of the above, to the executor or administrator of the estate of the insured; or

(6) If none of the above, to other next of kin in accordance with the laws of the State wherein the insured member was domiciled at date of death.

(j) The insured member may elect in writing that settlement of the insurance proceeds be made either in a lump sum or in 36 equal monthly installments. If no election is made or the member elects that payment be made in a lump sum, the beneficiary may elect at the time of the member's death either mode of settlement.

An election to be effective must be received before the member's death by the appropriate office as specified in paragraph (d) of this section.

§ 9.17 Taxation and exemption.

Section 770(g), title 38, United States Code provides that payment of benefits due or to become due under Servicemen's Group Life Insurance or Veterans' Group Life Insurance made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. The preceding sentence shall not apply to (a) collection of amounts not deducted from the member's pay, or collected from the member by the Secretary concerned under 38 U.S.C. 769 (a), (b) levy under subchapter D, chapter 64 of the Internal Revenue Code of 1954 (relating to the seizure of property for collection of taxes), and (c) the taxation of any property purchased in part or wholly out of such payments.

§ 9.20 Assignments

Servicemen's Group Life Insurance, Veterans' Group Life Insurance and benefits thereunder are not assignable.